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No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

BASS AVIATION, INC.,

Petitioner,

v.

MARGARITA HERNANDEZ, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

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QUESTION PRESENTED FOR REVIEW

Whether the sale and lease of aircraft in Alabama to Florida residents by a Mississippi corporation based in Alabama is a constitutionally cognizable contact of that corporation with Florida permitting the exercise of specific jurisdiction by Florida over the corporation with respect to a cause of action which arose out of an aircraft accident in Haiti, where the alleged negligence of the corporation occurred, if at all, in Alabama, and where the particular aircraft involved had been leased by the corporation in Alabama to a Florida resident and was flown by the Florida resident from Florida to Haiti.

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Petitioner Bass Aviation, Inc. (hereinafter Bass)[1] prays

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[1]The parties to the proceeding before the Fourth District Court of Appeal of the State of Florida were: Margarita Hernandez, as Personal Representative of the Estate of Rafael Hernandez, Jr., deceased; Margarita Hernandez individually; Stanley Hernandez; Ahiza Hernandez; Gates Learjet Corp.; and Linda Moyer, as Personal Representative of the Estate of Glenn Charles Moyer, deceased (appellants); and Bass Aviation, Inc. and The Insurance Company of the State of Pennsylvania (appellees).

Although in the style of the case before the Fourth District Court of Appeal, Titanic Aircraft Sales and Service, Ltd. appears as appellee, it was not a party to the proceeding before the Fourth District Court

that a writ of certiorari issue to review the decision of the Fourth District Court of Appeal of Florida.

OPINIONS BELOW

The order of the trial court, the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida, dismissing the complaint against petitioner Bass Aviation, Inc. on grounds of lack of *in personam* jurisdiction, appears in the appendix. (App. 8a).

The opinion of the District Court of Appeal of the State of Florida, Fourth District, reversing the order of the trial court, Chief Judge Anstead dissenting, appears at App. 1a-7a.

The order of the Supreme Court of Florida declining discretionary jurisdiction to review the decision of the Court of Appeal, Justice McDonald dissenting, appears at App. 10a.

None of the above orders and opinions are officially or unofficially reported.

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of Appeal.

Bass Aviation, Inc. and the Insurance Company of the State of Pennsylvania invoked the certiorari jurisdiction of the Supreme Court of Florida.

Pursuant to Rule 28.1 of the Rules of the Supreme Court, Petitioner states that, at this time, it has no parent, subsidiary or affiliate companies. At the time the cause of action arose, Bass was a subsidiary of Alabama Aircraft, Inc., an Alabama corporation based in Fairhope, Alabama. At that time, Bass was also the parent company of Air Medic, Inc., an Alabama corporation also based in Fairhope, Alabama.

JURISDICTION

The District Court of Appeal of the State of Florida, Fourth District, in an opinion filed July 11, 1984, reversed an order entered by the trial court dismissing petitioner on grounds of lack of *in personam* jurisdiction and insufficient minimum contacts by petitioner with the State of Florida. (App. 1a-7a). On July 26, 1984, Bass moved for rehearing which the District Court of Appeal denied on August 21, 1984. (App. 9a). On September 20, 1984, Bass timely filed a notice, invoking the discretionary *certiorari* jurisdiction of the Supreme Court of Florida (App. 46a-47a), and, on October 1, 1984, Bass timely served its brief on jurisdiction. On January 4, 1985, the Supreme Court of Florida denied Bass' Petition for Review stating that no motion for rehearing would be entertained by the court. (App. 10a).

The decision of the Court of Appeal is final on the federal issue involved herein. See *Calder* v. *Jones*, 104 S. Ct. 1482, 1486 n.8 (1984).

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. §1257(3) (1982).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution and §48.193 of the Florida Statutes are the constitutional and statutory provisions involved in this case. They are included in the appendix at 49a-51a.

STATEMENT OF THE CASE

The facts of the case and the contacts upon which the District Court of Appeal relied in exercising *in personam* jurisdiction over Bass are set forth in the opinion of the District Court of Appeal. (App. 1a-7a).

On February 29, 1980, Petitioner Bass entered into a lease of a Lear Jet aircraft with Titanic Aircraft Sales and Services, Ltd. (hereinafter Titanic) in Fairhope, Alabama. Under the provisions of the lease, the parties agreed that Alabama law was to govern. (App. 48a).

Titanic was a Bahamian corporation which conducted business in Florida. The aircraft which was the subject of the lease was delivered by Bass in Alabama to Glenn Moyer, an agent of Titanic and a resident of Florida. At the time the lease was entered into, Mr. Moyer told Bass that he would be flying the aircraft to Florida at some point.

After flying the aircraft from Alabama to the midwest and northeast United States, Mr. Moyer flew the aircraft to Florida. On March 3, 1980, the leased Lear Jet aircraft departed Miami en route to Haiti. Mr. Moyer was the pilot; respondents' decedent, Rafael Hernandez, also a Florida resident, was aboard the aircraft. While making a landing in Haiti, the plane crashed causing the death of Mr. Hernandez and Mr. Moyer.

Plaintiff alleged in his complaint against Bass and other defendants that Bass had "negligently and carelessly failed to properly maintain, equip and repair the Lear Jet N211MB, and further negligently and carelessly failed to warn users of the aircraft such as RAFAEL HERNANDEZ of the dangerous and unairworthy condition of the Lear Jet N211MB", and that this negligence was a proximate cause of death of Mr. Hernandez. (App. 16a-17a).

The cause of action did not arise in Florida but in Haiti, where the accident occurred. The cause of action did not arise out of or relate to any conduct of Bass in Florida. The subject aircraft was maintained by Bass in Alabama, not Florida, and leased by Bass in Alabama, not Florida.

Bass is a Mississippi corporation whose sole place of business is in Fairhope, Alabama. Bass is principally engaged in the business of selling aircraft and leasing aircraft for use in charter operations. Bass has never been qualified to do business in Florida, has never maintained an office in Florida, does not conduct its business in Florida and does not have officers, agents, or employees[2] located in Florida. Fairhope, Alabama is near the territorial border of Florida and many of Bass' customers were Florida residents. However, the sales and lease transactions in which Bass engages take place in Alabama. Except on one occasion, all aircraft for sale and lease were delivered by Bass in Alabama.

The contacts which the District Court of Appeal found existed between Bass and the state of Florida were the following: From 1977 through 1980, Bass occasionally advertised aircraft for sale in a publication called "The A/C Flyer," a nationally distributed publication. Bass placed the advertisements through the publication's office in Florida. Bass had previously leased in Alabama other aircraft to Titanic and to other residents of Florida. On one occasion, a leased aircraft was delivered in Florida by Bass. In addition to selling and leasing aircraft, Bass also lease/charters aircraft and permits lessees and prospective purchasers to use its nationwide FAA Part 135 certificate, a certificate necessary when an aircraft is to be used for charter. International Jet Charter, a company based in Fort Lauderdale, Florida was one of the users of Bass' Part 135 certificate. None of the aforementioned "contacts" were related to the crash of the Lear Jet aircraft in Haiti out of which the cause of action arose.

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[2]One employee of Bass is a Florida resident and commutes to work in Fairhope, Alabama.

PROCEEDINGS IN THE TRIAL COURT

On February 26, 1982, plaintiff-respondent Margarita Hernandez, as personal representative of the estate of Rafael Hernandez, filed a complaint in the 11th Judicial Circuit Court for Dade County seeking damages for the alleged wrongful death of her husband in the crash of the Bass-leased Lear Jet aircraft in Haiti. Named as defendants, *inter alia*, were Linda Moyer, the personal representative of the estate of the deceased pilot Glenn Moyer, Gates Lear Jet Corp. and Bass.

The allegations of jurisdiction over petitioner Bass were as follows:

> 13. At all times material hereto, the Defendant, BASS, was an owner, lessee and operator of Lear Jet N211MB. BASS is in the business of leasing various aircraft to persons and organizations which operate the aircraft throughout the United States including the State of Florida. Upon information and belief, BASS leased Lear Jet N211MB to persons and organizations residing and operating in the State of Florida, and leased and operated other aircraft in the State of Florida. Prior to March 3, 1980, BASS delivered Lear Jet N211MB into the custody of GLENN CHARLES MOYER with the knowledge that he would fly N211MB to various places within and without the United States of America including the State of Florida.

(App. 14a-15a).

Bass specially appeared and timely moved to dismiss the action *inter alia* on grounds that the court lacked jurisdiction over the person of Bass. (App. 20a-22a).

In a companion action, Linda Moyer, as personal representative of the estate of the pilot Glenn Moyer, had filed an

earlier complaint in the 17th Judicial Circuit for Broward County, Florida. Named as defendants were Gates Lear Jet Corp., Bass and Margarita Hernandez, as personal representative of the estate of Rafael Hernandez.

The Hernandez action was thereafter transferred from Dade County to Broward County.

After discovery on the issue of *in personam* jurisdiction, the court (The Honorable James H. Reasbeck) entered its ruling in the Hernandez case, dismissing Bass from the action on jurisdictional grounds, holding:

> [T]he Court finds that there are not sufficient minimum contacts by BASS AVIATION, INC. with the State of Florida, therefore the Court lacks jurisdiction over the defendant BASS AVIATION, INC. and the claim against them be and the same is hereby dismissed.

(App. 82a).

The Circuit Court did not rule on jurisdiction in the Moyer case and deferred any such ruling pending appeal of the Hernandez order of dismissal. Respondent Hernandez appealed the ruling to the Florida Fourth District Court of Appeal. Under Florida practice, Moyer and Gates Lear Jet Corp., as interested parties, were permitted to join and did join in the appeal.

THE FOURTH DISTRICT COURT OF APPEAL PROCEEDING

On appeal, Hernandez, Gates Lear Jet and Moyer argued that Section 48.193 of the Florida Statutes (Florida's long-arm statute) (App. 49a-51a), and the constitutional standard for weighing minimum contacts under *World-Wide Volkswagen v. Woodson*, 444 U.S. 286 (1980) were satisfied. Moyer argued that Bass' prior dealings with Florida resi-

dents in Alabama plus its nationwide advertising of aircraft for sale through a publication in Florida constituted business activities by Bass in Florida. Argued Moyer:

> By dealing with a Florida resident (MOYER) and by having foreknowledge that the aircraft was bound for Florida, coupled with the fact that the crash actually occurred on a flight from Miami, Florida, BASS AVIATION'S Florida activities were also directly related to the crash which is the subject of this suit. (App. 27a).

The District Court of Appeal did not specifically rule on whether §48.193 of the Florida Statutes was satisfied but held that the constitutional test for *in personam* jurisdiction established by the Court and followed by the courts of Florida was satisfied. (App. 2a). Stated the court:

> [W]e conclude that the allegations of the plaintiffs' complaint and their subsequent proof were sufficient to meet the following test expressed by the United States Supreme Court and followed by the courts of Florida in *Lacy v. Force V Corp.*, 403 So.2d 1050, 1054 (Fla. 1st DCA 1981):
>
> > Unquestionably the single most important factor to be considered is whether "the defendant's conduct and connnection with the forum . . . are such that he should reasonably anticipate being haled into court there . . ." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. at 297, 100 S.Ct. at 567, 62 L.Ed.2d at 501. It is essential that this circumstance be considered from the perspective of the defendant—not from that of the plaintiff. *See Shaffer v. Heitner*, 433 U.S. 186, 204, 97 S.Ct. 2569, 2580, 43 L.Ed.2d 683 (1977). The reasonable foreseeability factor is frequently applied to force a nonresident defendant to answer a suit within the forum if it "purposefully

> avails itself of the privilege of conducting activities within the forum . . . ." *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 1240, 2 L.Ed.2d 1283 (1958).

(App. 2a-3a).

The District Court of Appeal held that Bass' leasing of the aircraft to a Florida resident with knowledge that the aircraft would be used in Florida constituted a sufficient contact between Bass and the forum. The court did not specifically rule whether this "contact" with Florida gave rise to or related to the cause of action.

Chief Judge Anstead dissented from the opinion and decision of the court.[3]

PROCEEDINGS BEFORE THE FLORIDA SUPREME COURT

Bass thereafter sought discretionary review of the decision of the Fourth District Court of Appeal. (App. 46a-47a). The Supreme Court of Florida declined to accept jurisdiction. (App. 10a).

REASON FOR GRANTING THE WRIT

The District Court of Appeal has decided an important question of federal law which conflicts with decisions of the Court. Sup. Ct. R. 17.1(c).

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[3]The parties' assignment of error (App. 23a-45a) and the District Court of Appeal's finding that the allegations of the plaintiff's complaint and its proof met the constitutional test set forth by the Court establish that a federal question was timely and properly raised and passed upon by the District Court of Appeal. Rule 21.1(h) of the Rules of the Supreme Court.

A. The Doctrine of Specific Jurisdiction

The principle of specific jurisdiction[4] has evolved from the Court's decision in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). In *International Shoe*, the Court stated:

> [T]o the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations, and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue.

326 U.S. at 319.

While the Court has not specified what sort of tie or connection between a cause of action and a defendant's contacts with a forum is constitutionally necessary for the exercise of specific jurisdiction,[5] the Court has required some purposeful activity in the forum state which in some way is connected with the cause of action.

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[4]"It has been said that when a State exercises personal jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the forum, the State is exercising 'specific jurisdiction' over the defendant." *Helicopteros Nacionales de Columbia, S. A. v. Hall*, 104 S. Ct. 1868, 1872 n.8 (1984).

[5]In *Helicopteros Nacionales de Colombia, S. A. v. Hall*, 104 S. Ct. 1868, 1873 n.10 (1984), the Court declined to examine whether a distinction should be drawn between "controversies that 'relate to' a defendant's contacts with a forum and those that 'arise out of' such contacts."

In *Hanson v. Denckla*, 357 U.S. 235 (1958), the Court stated:

> [I]t is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.

357 U.S. at 253.

> The cause of action in this case is not one that arises out of an act done or transaction consummated in the forum state.

357 U.S. at 251.

> [T]his suit cannot be said to be one to enforce an obligation that arose from a privilege the defendant exercised in Florida.

357 U.S. at 252.

Under the decisions of the Court there must be a constitutionally cognizable tie between the defendant, the forum and the litigation before specific jurisdiction over a defendant can be exercised by the forum state. *Shaffer v. Heitner*, 433 U.S. 186 (1977).

A defendant's "conduct and connection with the forum" was addressed in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). Although the cause of action arose in the forum state in *World-Wide Volkswagen*, the Court did not reach nor need to reach the issue whether the defendant's connection with the forum related to the cause of action because the Court found there was no constitutionally cognizable contact of the defendant with the forum.

In *World-Wide Volkswagen*, the issue was whether an independent Volkswagen distributor and retailer based in

New York, who had sold an automobile in New York which found its way to Oklahoma, had sufficient contacts and connection with Oklahoma so as to constitutionally subject it to the jurisdiction of Oklahoma courts.

If, in *World-Wide Volkswagen*, the defendants' contacts with the forum were pervasive, continuous and systematic, the defendant would be subject to the general jurisdiction of the forum state. If the contacts were not so pervasive but the plaintiff's cause of action arose out of or related to the defendant's contacts with the forum state, the state could constitutionally exercise specific jurisdiction over the defendant. *See, Helicopteros Nacionales de Colombia, S. A. v. Hall*, 104 S.Ct. 1868 (1984).

B. The Constitutional Issue in the Case

The constitutional issue presented by the case at bar is whether Bass had constitutionally cognizable contacts with the forum which either gave rise to or were related to the cause of action to permit the Florida court to exercise specific jurisdiction over Bass.[6]

C. The Facts Related to the Issue

The facts relied upon by the District Court of Appeal of Florida are not in dispute. Bass is based in Alabama near the Florida territorial border and is in the business of selling

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[6]The issue is not a state issue: whether the facts of this particular case satisfied the connexity requirements of Section 48.193 of the Florida Statutes. The Court of Appeal did not specifically rule whether these contacts met §48.193 or not. The dissenting judge was of the opinion that §48.193 was not satisfied.

The issue is, notwithstanding whether §48.193 was met or not, whether the contacts found by the District Court of Appeal were constitutionally cognizable contacts of Bass with Florida and were sufficiently connected with the cause of action to permit the constitutional exercise of specific jurisdiction over Bass by the Florida courts.

and leasing aircraft in Alabama. Bass does not do business in Florida but does do business in Alabama with Florida residents.

Bass leased the aircraft in Alabama to Titanic, a company operating in Florida. This lease provided that the law of Alabama was to govern. Bass knew at the time of the lease that the aircraft would be operated in Florida by the lessee. The aircraft did come to Florida and left Florida for Haiti on a trip which ended in the crash of the aircraft in Haiti.

The cause of action alleged against Bass was based upon negligent maintenance of the aircraft and failure to warn, both of which events, if they occurred at all, occurred in Alabama. The cause of action arose in Haiti, the place of the accident.

D. Contacts Between Bass and the Forum

The District Court of Appeal found cognizable contacts between Bass and the Florida forum in two ways: (1) Bass' dealings with Florida residents and (2) Bass' knowledge that the aircraft leased in Alabama would be taken to Florida by a Florida resident. Reliance on these "contacts" for the exercise of specific jurisdiction is contrary to the teachings of the Court in *World-Wide Volkswagen*.

1. Bass' Dealings with Florida Residents

In *World-Wide Volkswagen*, the Court found that a defendant's connection with the forum was not established simply because the vehicle sold in New York found its way to Oklahoma. The Court rejected the notion that jurisdiction attaches to the chattel, stating, "Every seller of chattels would in effect appoint the chattel his agent for service of process. His amenability to suit would travel with the chattel." 444 U.S. at 296.

The case at bar represents a variance of that rejected notion. The District Court of Appeal appears to hold that by leasing an aircraft in Alabama to a Florida resident, the lessor has appointed the lessee as his agent for service of process in the lessee's state.

As the Court stated in *Hanson v. Denckla:*

> unilateral activity of those who claim some relationship with a non-resident defendant cannot satisfy the requirement of contact with the forum State . . . [I]t is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State.

Hanson v. *Denckla*, 357 U.S. at 253. *Accord, World-Wide Volkswagen Corp.*, 444 U.S. at 298.

The fact that Florida residents come to Alabama to deal with Bass is the kind of "unilateral activity of those who claim some relationship with a non-resident defendant" which the Court held could not satisfy the requirement of contact with the forum state.

The necessity that there be contact with the forum state by the defendant stems in part from the territorial limitations imposed by the United States Constitution on the sovereign power of states to adjudicate cases brought against non-resident defendants. *World-Wide Volkswagen Corp.*, 444 U.S. at 293. Given the territorial limitations of a state's sovereign powers over a non-resident defendant, it is constitutionally essential for the exercise of specific jurisdiction that the defendant purposefully conduct activities in the state which give rise to or relate to the cause of the action. "The Due Process Clause, by ensuring the 'orderly administration of the laws,' . . . gives a degree of predictability to the legal system that allows potential defendants

to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." 444 U.S. at 297. (*quoting International Shoe Co. v. Washington*, 326 U.S. at 319)

Bass confined its transactions to Alabama and avoided transactions in Florida and in this case Bass did nothing in Florida which had anything to do with the cause of action.

Specific jurisdiction in this case was based solely on the fact that Bass dealt with Florida residents in Alabama and that Bass leased the subject aircraft in Alabama to a Florida resident.

Contrary to the Court's holdings in *World-Wide Volkswagen, International Shoe* and *Hanson*, specific jurisdiction in this case was based not on the defendant's contacts with the forum and the litigation but was based solely on Bass' relationship with Florida residents.

If the District Court of Appeal's holding should prevail, jurisdiction over a defendant would be governed by the plaintiff's contacts with the forum and the forum state's interest in adjudicating the rights of its citizens. *See*, Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction*, 1980 S. CT. REV. 77, 105-107 (1980).

Despite some considerations of convenience to the plaintiff, the Court has inalterably adhered to the constitutional principle that it is the defendant's contacts with the forum, not the plaintiff's, which control *in personam* jurisdiction over the defendant, and when specific jurisdiction is at issue, the only constitutionally cognizable contacts are those contacts of the defendant with the forum (and not with its residents) which give rise to or relate to the cause of action. There were no cognizable contacts between Bass and

the forum connected with the cause of action. Bass' dealings with Florida residents in Alabama are not contacts with Florida.

2. The Stream of Commerce Doctrine

The District Court of Appeal found as a cognizable contact of Bass with Florida the fact that Bass had knowledge that the aircraft leased in Alabama to a Florida resident would be operated in Florida. This finding was a misapplication of the "stream of commerce" doctrine described in *World-Wide Volkswagen*.

The Court, in *World-Wide Volkswagen*, held that if the defendant purposefully avails itself of the privilege of conducting activities within the forum state indirectly through agents or distributors, such activities will be deemed constitutionally cognizable contacts by the defendant with the forum.

> Hence if the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others.

444 U.S. at 297.

This "stream of commerce" basis for exercising specific jurisdiction was not present in the case at bar. Bass did not invoke the privilege or benefit of conducting business in Florida. Bass did not lease or sell aircraft through others in Florida or attempt to develop a market in Florida. Lessees or purchasers who wished to deal with Bass had to come to Alabama where the transaction was consummated. Not

only did Bass not invoke the privilege or benefit of Florida laws, Bass carefully avoided any transactions or business in Florida.

In his dissent in *World-Wide Volkswagen*, Mr. Justice Brennan stated:

> "The Court [in *World-Wide Volkswagen*] accepts that a State may exercise jurisdiction over a distributor which 'serves' that State 'indirectly' by 'deliver[ing] its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum state. . . . It is difficult to see why the Constitution should distinguish between a case involving goods which reach a distant State through a chain of distribution and a case involving goods which reach the same State because a consumer, using them as the dealer knew the customer would, took them there. In each case the seller purposefully injects the goods into the stream of commerce and these goods predictably are used in the forum State.

444 U.S. 306-307 (footnotes and citations omitted)

Noted Mr. Justice Brennan:

> For example, I cannot understand the constitutional distinction between selling an item in New Jersey and selling an item in New York expecting it to be used in New Jersey.

444 U.S. 307 n. 11.

The distinction which the Court upheld over the dissent of Mr. Justice Brennan is rooted in *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945) and *Hanson* v. *Denckla*, 357 U.S. 235 (1958).

For the constitutional exercise of specific jurisdiction under the stream of commerce doctrine, there must be some act by the defendant or others acting for it by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state.

Such an act by Bass was absent in this case. Dealings with Florida residents in Alabama are not purposeful activities in Florida. The "stream of commerce" doctrine described in *World-Wide Volkswagen* is based upon the purposeful marketing by sellers of products in the state, through agents and independent wholesalers and jobbers, and the placing of these products into the "stream of commerce" for sale in the state. Bass deals solely with "consumers" in Alabama and to which state the consumer takes the product does not constitute a contact of Bass with that state.

Although in *World-Wide Volkswagen*, dissenting Justices held views to the contrary, the Court recognized that it is the defendant's contact with the forum connected with the cause of action which is constitutionally required, and that there is a constitutional distinction between a seller who, through a chain of distribution, sells his product in the forum state and a seller who sells (or leases) a product in a sister state to a consumer with knowledge that the consumer will take it to the forum state. *World-Wide Volkswagen Corp.*, 444 U.S. at 306-07.

The leasing of an aircraft in Alabama to a Florida resident with knowledge that the Florida resident will take it to Florida is not a cognizable constitutional contact of Bass with Florida under the stream of commerce doctrine, or otherwise.

E. The Connection Between the Defendant's Forum Contacts and the Cause of Action.

There was no act in Florida by Bass which had any connection with the cause of action which arose in Haiti. In

specific jurisdiction cases, the fact that the cause of action arose in the forum state has generally been given great weight. *See, Keeton v. Hustler Magazine, Inc.*, 104 S.Ct. 1473 (1984); *Calder v. Jones*, 104 S.Ct. 1482 (1984).

In this case, the cause of action arose not in Florida, but in Haiti. In the formulation of the stream of commerce doctrine by the Court, the fact that the source of the injury was in the forum state appears to be important to the application of the doctrine. Stated the Court: "it is not unreasonable to subject it [the defendant] to suit in one of those States if its allegely defective merchandise has there been the source of injury to its owner or to others." *World-Wide Volkswagen*, 444 U.S. at 297. In cases where *in personam* jurisdiction was found by application of the stream of commerce doctrine, the cause of action arose in the forum state, *see, e.g., DeMelo v. Toche Marine, Inc.*, 711 F.2d 1260 (5th Cir. 1983), *McKown v. Criser's Sales and Service*, 48 Md.App. 739, 430 A.2d 91 (1981), *cert. denied*, (1981), or the sale of the product took place in the forum state. *See State ex rel. Hydraulic Servocontrols v. Dale*, 294 Or. 381, 657 P.2d 211 (1982); *Oswalt v. Scripto, Inc.*, 616 F.2d 191 (5th Cir. 1980).

Bass' "contact" with the forum had no connection with the cause of action. The cause of action, the lease of the aircraft and the claimed negligence did not occur in Florida.

F. The Need to Review this Case.

Issues concerning the constitutional limits of *in personam* jurisdiction over a non-resident defendant continue to occupy both federal and state courts. The constitutional parameters of specific jurisdiction should be clear and well-defined so that such issues can be settled early and finally in the litigation. Defendants who contest jurisdiction in many cases must await a final determination on the merits before a final review of jurisdiction. Plaintiffs are similarly preju-

diced if forced to a trial on the merits in a forum which is ultimately determined to lack jurisdiction.

The constitutional parameters for the exercise of specific jurisdiction remain unclear.

The "stream of commerce" doctrine articulated in *World-Wide Volkswagen*, as applied in the courts, has uncertain application. *See*, Lilly, *Jurisdiction Over Domestic and Alien Defendants*, 69 VA.L.REV. 85, 102-107 (1983); Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction*, 1980 SUP. CT. REV. 77, 91-96 (1980).

The issue in the case at bar involves one aspect of the uncertain constitutional parameters for the exercise of specific jurisdiction, is of great importance and should be reviewed by the Court.

CONCLUSION

For the foregoing reasons, petitioner urges that the petition for a writ of certiorari be granted.

THOMAS J. WHALEN
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Dated: April 4, 1985

CERTIFICATE OF SERVICE

I, Thomas J. Whalen, being over the age of 18 years and a member of the law firm of Condon & Forsyth, hereby certify that I have, this fourth day of April, 1985, served three copies of the foregoing petition for a writ of certiorari to the District Court of Appeal of the State of Florida, Fourth District upon the following parties, by mailing such copies to their attorneys of record in sealed envelopes, first class postage prepaid, deposited at the United States Post Office, located at North Capitol and Massachusetts Avenue, N.E., Washington, D.C.:

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APPENDIX

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IN THE
DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FOURTH DISTRICT

JULY TERM 1984

CASE NO. 83-366

MARGARITA HERNANDEZ, as Personal Representative of the Estate of RAFAEL HERNANDEZ, JR., deceased; MARGARITA HERNANDEZ; individually; STANLEY HERNANDEZ; AHIZA HERNANDEZ; GATES LEARJET CORP., a foreign corporation; and LINDA MOYER, as Personal Representative of the Estate of GLENN CHARLES MOYER, deceased,

Appellants,

V.

BASS AVIATION, INC., a foreign corporation; TITANIC AIRCRAFT SALES AND SERVICE, LTD., a foreign corporation; and THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, a foreign corporation,

Appellees.

Opinion filed July 11, 1984

Appeal from the Circuit Court for Broward County;
James M. Reasbeck, Judge.

GLICKSTEIN, J.

This is an appeal from an order which dismissed Bass Aviation from the action because of lack of in personam jurisdiction and insufficient minimum contacts by that defendant with the State of Florida. We reverse and remand.

We held in *Cosmopolitan Health Spa, Inc. v. Health Industries, Inc.*, 362 So.2d 367, 368 (Fla. 4th DCA 1978):

> In order to allow the assertion of *in personam* jurisdiction over a defendant outside the territorial reach of the courts of this state, a burden is imposed on the plaintiff to plead sufficient material facts to establish a basis for the exercise of such jurisdiction. If such jurisdiction over the person of the defendant is properly challenged by affidavit, the plaintiff must sustain its assertions by affidavit or other proof and may not rely on a mere reiteration of the allegations contained in the complaint. *Georgia Savings and Loan Service Corp. v. Delwood Estates, Inc.*, 315 So.2d 237 (Fla. 1st DCA 1975). See also *Dublin Company v. Peninsular Supply Co.*, 309 So.2d 207 (Fla. 4th DCA 1975). (Emphasis in original.)

Applying the foregoing requirements to the present case, we conclude that the allegations of the plaintiffs' complaint and their subsequent proof were sufficient to meet the following test expressed by the United States Supreme Court and followed by the courts of Florida in *Lacy v. Force V Corp.*, 403 So.2d 1050, 1054 (Fla. 1st DCA 1981):

> Unquestionably the single most important factor to be considered is whether "the defendant's conduct and connection with the forum . . . are such that he should reasonably anticipate being haled into court there . . ." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. at

> 297, 100 S.Ct. at 567, 62 L.Ed.2d at 501. It is essential that this circumstance be considered from the perspective of the defendant—not from that of the plaintiff. See *Shaffer v. Heitner*, 433 U.S. 186, 204, 97 S.Ct. 2569, 2580, 43 L.Ed.2d 683 (1977). The reasonable foreseeability factor is frequently applied to force a nonresident defendant to answer a suit within the forum if it "purposefully avails itself of the privilege of conducting activities within the forum . . . " *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 1240, 2 L.Ed.2d 1283 (1958).

Paragraph 13 of the complaint alleged:

> (13) Upon information and belief, Bass leased Learjet N211MB to persons and organizations residing and operating in the state of Florida, and leased and operated other aircraft in the state of Florida. Prior to March 3, 1980, Bass delivered Learjet N211MB into the custody of Glenn Charles Moyer with the knowledge that he would fly N211MB to various places within and without the United States of America including the state of Florida.

Bass Aviation moved to dismiss the complaint for lack of jurisdiction over its person and attached the affidavit of its president, attesting to the facts that Bass was a Mississippi corporation whose principal place of business is in Fairhope, Alabama;[1] that it neither has nor had officers, agents, employees, jobbers, wholesalers or distributors in Florida; that it did not nor had not placed advertising in any publications in Florida nor sent direct mail nor broadcast advertising therein; that it does or did not use Florida banks as lenders; that it did not lease the aircraft in question to

---

[1]Fairhope is on the east side of Mobile Bay, west of Pensacola, Florida.

anyone in Florida, directly or indirectly; that it did not operate or maintain the subject aircraft here; that it had none of its products used or consumed here; that the lease for the aircraft was executed in Fairhope; that the aircraft left Fairhope for Denver; and that the pilot only mentioned Denver, Chicago and the northeast United States.

The affidavit did not address most of the allegations of paragraph 13 of the complaint but conflicted with the allegation therein that Bass knew the aircraft was going to be flown to Florida and without the U.S. The complaint had also alleged the alleged unairworthy aircraft flew from Miami to Haiti where it crashed in the mountains on March 3, 1980 killing the occupants.

The deposition of Bass' president revealed two discrepancies with his affidavit; namely, that the pilot had told him he would be flying from the northeast to Florida and that Bass had advertised in 1979 and 1980 in Florida pursuant to a written agreement with A/C Flyer, whose office was then, according to the printed agreement, in Miami. The deposition further reflected facts relevant to the jurisdictional inquiry. The subject aircraft was leased for seven days on February 29, 1980, by Bass to Titanic Aircraft Sales and Service, Ltd., a Bahamian corporation operating in Fort Lauderdale. Bass had previously entered into similar leases with the same party; and Mr. Bass testified as to another lease for other aircraft with another party operating in Fort Lauderdale. A long-term lease with this other party—for ten years commencing in late 1979—reflects delivery to be in Fort Lauderdale; and the record reflects correspondence and invoices directed to Fort Lauderdale.

The statement of facts in the main brief of appellants, Hernandez, alleges that the certificate held by Bass which was required by Part 135 of the Federal Aviation Regula-

tions was used by other entities who were renting or leasing aircraft from Bass, including a party in Fort Lauderdale. Appellees' brief did not dispute this fact.

In our opinion the trial court erred in not concluding that Bass should have reasonably anticipated being haled into court.

LETTS, J., concurs.
ANSTEAD, C. J., dissents with opinion.

ANSTEAD, C. J., dissenting:

Bass Aviation, Inc., a Mississippi corporation with its main office in Alabama, the lessor of an aircraft, was sued in negligence as the result of the crash of the aircraft in Haiti. The aircraft was leased in Alabama to a Bahamian corporation that did business in a number of states, including Florida. Under these facts I do not believe we can say the trial court erred in ruling that Bass was not amenable to service of process under the provisions of Section 48.193, Florida Statutes (1983), which provides:

> 48.193 Acts subjecting persons to jurisdiction of courts of state.—
>
> (1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits that person and, if he is a natural person, his personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following:
>
> (a) Operates, conducts, engages in, or carries on a business or business venture in this state or has an office or agency in this state.
>
> (b) Commits a tortious act within this state.

(c) Owns, uses, or possesses any real property within this state.

(d) Contracts to insure any person, property, or risk located within this state at the time of contracting.

(e) With respect to proceedings for alimony, child support, or division of property in connection with an action to dissolve a marriage or with respect to an independent action for support of dependents, maintains a matrimonial domicile in this state at the time of the commencement of this action or, if the defendant resided in this state preceding the commencement of the action, whether cohabiting during that time or not. This paragraph does not change the residency requirement for filing an action for dissolution of marriage.

(f) Causes injury to persons or property within this state arising out of an act or omission outside of this state by the defendant, provided that at the time of the injury either:

1. The defendant was engaged in solicitation or service activities within this state which resulted in such injury; or

2. Products, materials, or things processed, serviced, or manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade, or use, and the use or consumption resulted in the injury.

(g) Breaches a contract in this state by failing to perform acts required by the contract to be performed in this state.

(2) Service of process upon any person who is subject to the jurisdiction of the courts of this state as provided in this section may be made by personally

serving the process upon the defendant outside this state, as provided in s. 48.194. The service shall have the same effect as if it had been personally served within this state.

(3) Only causes of action arising from acts or omissions enumerated in this section may be asserted against a defendant in an action in which jurisdiction over him is based upon this section, unless the defendant in his pleadings demands affirmative relief on other causes of action, in which event the plaintiff may assert any cause of action against the defendant, regardless of its basis, by amended pleadings pursuant to the rules of civil procedure.

(4) Nothing contained in this section shall limit or affect the right to serve any process in any other manner now or hereinafter provided by law.

Subsections (1)(a) through (g) and (3) speak for themselves. Under the evidence, Bass' activities do not fall into any of these categories. I do not believe we can overturn the trial court's ruling on the basis of evidence of some prior advertising in Florida or the fact that some other aircraft leased by Bass were used in Florida.

IN THE
CIRCUIT COURT OF THE 17th JUDICIAL
CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

Case No: 82-13317 CP

MARGARITA HERNANDEZ, as Personal Representative of the Estate of RAFAEL HERNANDEZ, *etc., et al.*,

Plaintiffs,

VS.

LINDA MOYER, *et al.*,

Defendants.

ORDER

THIS CAUSE came on for hearing on January 17, 1983, on the motion by BASS AVIATION, INC., to quash and/or abate and/or dismiss complaint, and the Court having heard argument of counsel, and being otherwise advised in the premises, it is hereby

ORDERED and ADJUDGED that the Court finds that there are not sufficient minimum contacts by BASS AVIATION, INC., with the State of Florida, therefore the Court lacks jurisdiction over the Defendant, BASS AVIATION, INC., and the claim against them be and the same is hereby dismissed.

DONE and ORDERED in Chambers, at Ft. Lauderdale, Broward County, Florida, this 19 day of January, 1983.

CIRCUIT COURT JUDGE

IN THE
DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FOURTH DISTRICT

Case No. 83-366

MARGARITA HERNANDEZ, *etc., et al.*,

Appellant,

V.

BASS AVIATION, *etc., et al.*,

Appellee.

August 21, 1984

BY ORDER OF THE COURT:

ORDERED that the July 26, 1984 Motion for Rehearing filed by Appellee, Bass Aviation, is hereby denied.

SUPREME COURT OF FLORIDA

Friday, January 4, 1985

Case No. 65,908

District Court of Appeal,
4th District—No. 83-366

BASS AVIATION, INC., *et al.*,

Petitioners,

v.

MARGARITA HERNANDEZ, *et al.*,

Respondents.

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution (1980), and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d).

ADKINS, Acting C.J., OVERTON, EHRLICH and SHAW, J.J., concur
MCDONALD, J., dissents

Upon consideration of the Motion to Dismiss Petition for Review filed in the above cause by attorney for Respondent Linda Moyer, it is ordered that said Motion be and the same is hereby denied.

ADKINS, Acting C.J., OVERTON, MCDONALD, EHRLICH and SHAW, J.J., concur

Sid J. White
Clerk Supreme Court

by _____
Deputy Clerk

IN THE
CIRCUIT COURT OF THE 11TH JUDICIAL
CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

Case No. 82-3725

MARGARITA HERNANDEZ, as Personal Representative of the Estate of RAFAEL HERNANDEZ, Deceased; MARGARITA HERNANDEZ, Individually; STANLEY HERNANDEZ and AHIZA HERNANDEZ,

Plaintiffs,

VS.

LINDA MOYER, as Personal Representative of the Estate of GLENN CHARLES MOYER, Deceased; BASS AVIATION, INC., a Foreign Corporation, EXECUFLITE, INC., a Foreign Corporation, GATES LEAR JET CORPORATION, a Foreign Corporation, THE GENERAL ELECTRIC COMPANY, a Foreign Corporation, TITANIC AIRCRAFT SALES AND SERVICES, LTD., a Foreign Corporation, and THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, a Foreign Corporation,

Defendants.

COMPLAINT

The Plaintiffs, MARGARITA HERNANDEZ, as Personal Representative of the Estate of RAFAEL HERNANDEZ, Deceased; MARGARITA HERNANDEZ, Individually; STANLEY HERNANDEZ and AHIZA HERNANDEZ, sue the Defendants, LINDA MOYER, as

Personal Representative of the Estate of GLENN CHARLES MOYER, Deceased; BASS AVIATION, INC., a Mississippi corporation (hereinafter referred to as "BASS"); EXECUFLITE, INC., an Ohio corporation, (Hereinafter referred to as "EXECUFLITE"); GATES LEAR JET CORPORATION, a Delaware corporation (hereinafter referred to as "LEAR"); THE GENERAL ELECTRIC COMPANY, a New York corporation, (hereinafter referred to as "GENERAL ELECTRIC"); TITANIC AIRCRAFT SALES CORPORATION, A Bahamian corporation; (hereinafter referred to as "TITANIC AIRCRAFT"); TITANIC AIRCRAFT SALES AND SERVICES, LTD., a Bahamian corporation, (hereinafter referred to as "TITANIC SALES"); and THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, a Pennsylvania corporation, (hereinafter referred to as "INSURANCE COMPANY"), and allege:

1. That this is an action for damages including wrongful death in excess of FIVE THOUSAND ($5,000.00) DOLLARS.

2. That the Plaintiff, MARGARITA HERNANDEZ, is the appointed Personal Representative of the Estate of RAFAEL HERNANDEZ, Deceased, with Letters of Administration having been issued and filed in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, Probate Division, Case No. 81-7419, and she is now acting as personal Representative of the Estate. MARGARITA HERNANDEZ sui juris, a resident of Dade County, Florida, and the widow of the Decedent RAFAEL HERNANDEZ.

3. That the Plaintiffs, STANLEY HERNANDEZ and AHIZA HERNANDEZ, are residents of Dade County,

Florida and are the minor children or adult dependent children of the Decedent RAFAEL HERNANDEZ.

4. That the Defendant, LINDA MOYER, is the appointed Personal Representative of the Estate of GLENN CHARLES MOYER, Deceased, with Letters of Administration having been issued or filed in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, Probate Division, Case No. 80-1660, and LINDA MOYER is now acting as Personal Representative of the Estate.

5. That the Defendant, BASS, is a corporation organized and existing under and by virtue of the laws of the State of Mississippi, with its principal place of business located in Fairhope, Alabama.

6. That the Defendant, EXECUFLITE, is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its principal place of business located in Cincinnati, Ohio.

7. That the Defendant, LEAR, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal place of business located in Tucson, Arizona. LEAR is authorized to and does conduct, engage in and carry on regular business in the State of Florida.

8. The Defendant, GENERAL ELECTRIC, is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business located in Hartford, Connecticut. GENERAL ELECTRIC is authorized to and does conduct, engage in and carry on regular business in the State of Florida.

9. The Defendant, TITANIC AIRCRAFT, is and at all times material hereto, was a corporation existing under and

by virtue of the laws of the Bahamas with its principal place of business in Nassau, Bahamas. Upon information and belief the officers and directors of TITANIC AIRCRAFT resided in the State of Florida and regularly conducted business in the State of Florida.

10. The Defendant, TITANIC SALES, is and at all times material hereto, was a corporation existing under and by virtue of the laws of the Bahamas with its principal place of business in Nassau, Bahamas. Upon information and belief the officers and directors of TITANIC SALES resided in the State of Florida and regularly conducted business in the State of Florida.

11. The Defendant, INSURANCE COMPANY, is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal place of business located in Philadelphia, Pennsylvania. The INSURANCE COMPANY is authorized to and does business in the State of Florida.

12. At all times material hereto, the Defendant, EXECUFLITE, was an owner, lessor and operator of a certain Gates Lear Jet Model No. 23, Registration No. N211MB, Serial No. 059. Upon information and belief, EXECUFLITE, leased Lear Jet N211MB and other aircraft at various times to persons and organizations throughout the United States including the State of Florida. Prior to March 3, 1980, EXECUFLITE delivered Lear Jet N211MB to Defendant, BASS, with the knowledge that BASS would operate it and allow it to be operated by others worldwide.

13. At all times material hereto, the Defendant, BASS, was an owner, lessee and operator of Lear Jet N211MB. BASS is in the business of leasing various aircraft to persons and organizations which operate the aircraft throughout the United States including the State of Florida.

Upon information and belief, BASS, leased Lear Jet N211MB to persons and organizations residing and operating in the State of Florida, and leased and operated other aircraft in the State of Florida. Prior to March 3, 1980, BASS delivered Lear Jet N211MB into the custody of GLENN CHARLES MOYER with the knowledge that he would fly N211MB to various places within and without the United States of America including the State of Florida.

14. At all times material hereto, the Defendant, LEAR, designed, manufactured and sold Lear Jet N211MB.

15. At all times material hereto, the Defendant, GENERAL ELECTRIC, designed and manufactured the engines, Model No. CJ 610-6, which were installed on Lear Jet N211MB.

16. At all times material hereto, GLENN CHARLES MOYER was an agent, servant, employee or officer of TITANIC AIRCRAFT and TITANIC SALES and was acting within the scope of his authority and in furtherance of their interests.

17. That at all times material hereto, GLENN CHARLES MOYER controlled, operated and maintained Lear Jet N211MB as pilot-in-command with the expressed or implied permission of the Defendants, BASS, EXECUFLITE, TITANIC AIRCRAFT and TITANIC SALES.

18. On March 3, 1980, Lear Jet N211MB departed Miami International Airport, Miami, Florida, en route to Duvalier International Airport in Port-au-Prince, Haiti. RAFAEL HERNANDEZ was aboard the N211MB with the consent of the Defendants and was a foreseeable user of the aircraft. GLENN CHARLES MOYER was the pilot-in-command and at all times material was the sole manipulator of the

controls. While making its landing approach to the Duvalier International Airport, Lear Jet N211MB crashed into the mountains approximately thirteen (13) nautical miles north-northeast of Port-au-Prince, Haiti.

19. This crash caused the death of RAFAEL HERNANDEZ.

20. At all times material hereto, Lear Jet N211MB was a dangerous instrumentality.

21. The Defendants, and each of them, owe the duty of at least reasonable care to the Plaintiffs.

COUNT I

The Plaintiffs readopt and reallege Paragraphs 1 through 21.

22. The negligence and carelessness of GLENN CHARLES MOYER was the proximate cause, or in the alternative a contributing proximate cause, of the crash of Lear Jet N211MB in that GLENN CHARLES MOYER negligently and carelessly piloted, operated, commanded and controlled subject aircraft resulting in the crash which caused the death of RAFAEL HERNANDEZ.

WHEREFORE, Plaintiffs are entitled to recover their damages from LINDA MOYER as the Personal Representative of the Estate of GLENN CHARLES MOYER, and from BASS, EXECUFLITE, TITANIC AIRCRAFT and TITANIC SALES.

COUNT II

The Plaintiffs readopt and reallege Paragraphs 1 through 21.

23. That the Defendants, BASS, EXECUFLITE, GLENN CHARLES MOYER, TITANIC AIRCRAFT

and TITANIC SALES, negligently and carelessly failed to properly maintain, equip and repair the Lear Jet N211MB, and further negligently and carelessly failed to warn users of the aircraft such as RAFAEL HERNANDEZ of the dangerous and unairworthy condition of the Lear Jet N211MB. This negligence and carelessness was the proximate cause, or in the alternative a contributing proximate cause, of the crash of N211MB resulting in the death of RAFAEL HERNANDEZ.

WHEREFORE, Plaintiffs are entitled to recover their damages from BASS, EXECUFLITE, TITANIC AIRCRAFT, TITANIC SALES and LINDA MOYER as the Personal Representative of the Estate of GLENN CHARLES MOYER.

[Counts III, IV, V and VI and Paragraphs 21 Through 38 Relate Solely to Gates Lear Jet; Counts VII, VIII, IX and Paragraphs 39 Through 49 Relate Solely to General Electric]

COUNT X

Plaintiffs reallege and readopt Paragraphs 1 through 49 of the Complaint.

50. At all times material, the Defendants, LINDA MOYER, as Personal Representative of the Estate of GLENN CHARLES MOYER, Deceased, BASS, EXECUFLITE, LEAR, GENERAL ELECTRIC, TITANIC AIRCRAFT and TITANIC SALES by virtue of the foregoing facts were guilty of wanton negligence and acted so recklessly as to evince a reckless disregard to the life of RAFAEL HERNANDEZ. This wanton and reckless negligence proximately contributed to the crash of N211MB and the death of RAFAEL HERNANDEZ. At all times material, these Defendants, acting through their agents,

servants and employees, were aware that such wanton negligence would cause the crash in question, but failed to take any steps to prevent such wanton negligence and reckless conduct from occurring.

51. The negligence of these Defendants showed a reckless indifference to rights and safety of RAFAEL HERNANDEZ and was wanton.

WHEREFORE, Plaintiffs are entitled to recover their punitive damages against LINDA MOYER, as Personal Representative of the Estate of GLENN CHARLES MOYER, Deceased, BASS, EXECUFLITE, LEAR, GENERAL ELECTRIC, TITANIC AIRCRAFT and TITANIC SALES.

COUNT XI

The Plaintiffs readopt and reallege Paragraphs 1 through 49 of the Complaint.

52. The crash of N211MB was such an occurrence that in the ordinary course of events would not have happened had due care been exercised by GLENN CHARLES MOYER, BASS, EXECUFLITE, TITANIC AIRCRAFT, TITANIC SALES, LEAR and GENERAL ELECTRIC. At all times material hereto, N211MB and its parts were in the sole and exclusive control of these Defendants.

53. The negligence of these Defendants was the direct and proximate cause of the crash of N211MB resulting in the death of RAFAEL HERNANDEZ.

WHEREFORE, Plaintiffs are entitled to recover their damages against LINDA MOYER, as Personal Representatives of the Estate of GLENN CHARLES MOYER, Deceased, BASS, EXECUFLITE, LEAR, GENERAL

ELECTRIC, TITANIC AIRCRAFT and TITANIC SALES.

[Count XII and paragraph 54 relate solely to the defendant Insurance Company and Counts XIII through XVI relate to the individual claims of plaintiffs]

WHEREFORE, Plaintiffs, MARGARITA HERNANDEZ, as Personal Representative of the Estate of RAFAEL HERANNDEZ; MARGARITA HERNANDEZ, Individually, AHIZA HERNANDEZ and STANLEY HERNANDEZ, demand judgments against the Defendants, LINDA MOYER, as Personal Representative of the Estate of GLENN CHARLES MOYER, Deceased; BASS AVIATION, INC., EXECUFLITE, INC., GATES LEAR JET CORPORATION, THE GENERAL ELECTRIC COMPANY, TITANIC AIRCRAFT SALES CORPORATION, TITANIC AIRCRAFT SALES AND SERVICES, LTD. and THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, jointly and severally for any and all damages to which they are entitled and to such other relief as the Court may deem just, and demand trial by jury.

DATED this 26th day of February 1982.

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By _____
THOMAS R. TROMPETER

IN THE
CIRCUIT COURT OF THE 11th JUDICIAL
CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

Case No: 82 3725 (03)

MARGARITA HERNANDEZ, as Personal Representative of the Estate of RAPHAEL HERNANDEZ, deceased, MARGARITA HERNANDEZ, Individually, STANLEY HERNANDEZ and AHIZA HERNANDEZ,

Plaintiffs,

VS.

LINDA MOYER, *etc.*, *et al.*

Defendants

MOTION TO QUASH AND/OR ABATE AND/OR DISMISS COMPLAINT

COME NOW the Defendants, BASS AVIATION, INC., a Mississippi corporation (hereinafter referred to as "BASS")' and the INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, a New York corporation (hereinafter referred to as "INSURANCE COMPANY") by and through their undersigned attorneys, and specially appear to contest the jurisdiction of this Court over the person of the Defendants, and move this Court for the entry of an Order quashing and/or abating, and/or dismissing the Complaint for lack of jurisdiction over the person of the Defendants, insufficiency of process, insufficiency of service of process, failure to state a cause of action and failure to join an indispensable party, and as grounds therefore say as follows:

1. This Court lacks jurisdiction over the person of the Defendant, BASS AVIATION, INC., and lacks jurisdiction

over the person of the Defendant, "INSURANCE COMPANY", since the only jurisdictional allegations contained in the Complaint are rebutted by the affidavits of Philip W. Bass, President of "BASS" which have been heretofore filed with this Court in Case No: 82-1974 (09) and with the United States District Court for the Southern District of Florida in Cases No: 81-6028—CIV ALH and 81-6560 CIV NCR, copies of which are annexed hereto as Exhibits A, B and C respectively. These three cases arise out of the same factual circumstances and involve a number of the same parties.

2. There is an insufficiency of process and/or insufficiency of service of process; in that, the Plaintiff has failed to fully comply with Florida Statutes 48.19 and 48.161, and/or other allegedly applicable statutes for service of process on foreign corporations doing business in the State, and has further failed to allege sufficient factual allegations to justify service under those statutes which authorize substitute service, particularly in light of the fact that the jurisdictional allegations have been rebutted by the affidavits of Phillip W. Bass as is set forth above.

3. The Complaint fails to state a cause of action against "BASS" and hence against "INSURANCE COMPANY", its liability insurance carrier, in that, there are insufficient allegations of ultimate facts to show a relationship out of which a duty is implied by law and insufficient factual allegations to show the breach of any purported duty owed at law. 'Count II which addresses the alleged negligence of BASS AVIATION fails to contain any allegations of ultimate facts which would show negligence on the part of "BASS" but rather merely sets forth the legalistic and conclusory language of the pleader.

4. The Complaint fails to state a cause of action in Count XI, *res ipsa* loquitor, in that, it affirmatively avers an

alleges that at the time of the accident, the subject aircraft was in the sole and exclusive control of "these Defendants", when in fact the aircraft had been leased by "BASS" to TITANIC AIRCRAFT SALES & SERVICE, LTD., through its agent or servant, GLENN CHARLES MOYER, several days prior to the alleged accident, as is also evidenced by the affidavits of Phillip W. Bass and the lease agreement entered by the parties on February 29, 1980, a copy of which is attached hereto and marked as Exhibit "D" and therefore was in the sole control of either TITANIC AIRCRAFT SALES & SERVICE, LTD., GLENN CHARLES MOYER or RALPH HERNANDEZ at the time of the alleged crash.

5. The Complaint fails to adequately set forth a cause of action for wrongful death, in that, it fails to indicate the appropriate law to be applied in the circumstances and fails to indicate the law that the pleader perceives to be the appropriate law, and is therefore vague, ambiguous and incapable of a response.

6. The Complaint fails to state a cause of action for punitive damages in Count X, because the Complaint is utterly devoid of allegations of ultimate facts which would show that these Defendants have engaged in any activities which could be construed to be wanton negligence, or in a reckless disregard to the life of RAPHAEL HERNANDEZ; rather, Count X complains merely the legalistic and conclusory language of the pleader.

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JOHN R.W. PARSONS

DISTRICT COURT OF APPEAL
FOURTH DISTRICT OF FLORIDA

Case No. 83-366

MARGARITA HERNANDEZ, as Personal Representative of the Estate of RAFAEL HERNANDEZ, Deceased, MARGARITA HERNANDEZ, Individually, STANLEY HERNANDEZ, AHIZA HERNANDEZ, GATES LEARJET CORPORATION, a foreign corporation and LINDA MOYER, as Personal Representative of the Estate of GLENN CHARLES MOYER, Deceased,

Appellants,

-VS-

BASS AVIATION, INC., a foreign corporation; THE GENERAL ELECTRIC COMPANY, a foreign corporation; TITANIC AIRCRAFT SALES CORPORATION, a foreign corporation; TITANIC AIRCRAFT SALES AND SERVICE, LTD., a foreign corporation; and THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, a foreign corporation,

Appellees.

Brief of Appellant, Linda Moyer

STATEMENT OF THE CASE

Appellant adopts the Statement of the Case submitted by Co-Appellant GATES LEARJET and adds the following:

Prior to the hearing on BASS' motion to dismiss, Appellants deposed Phillip Bass, the President of BASS AVIATION, INC. Mr. Bass' deposition was filed of record prior

to the hearing and was relied upon by Appellants at the hearing (R. 152-333; A. 2-182).

STATEMENT OF THE FACTS

Appellant adopts the Statement of the Facts submitted by Co-Appellant GATES LEARJET and adds the following:

Phillip Bass, President of BASS AVIATION, INC., testified by deposition concerning the business activities of BASS AVIATION, INC., in Florida. BASS AVIATION advertised in Florida in a national aviation magazine called "The A/C Flyer" (R. 240, 241). The company placed these advertisements by phone calls to the A/C Flyer office in Fort Lauderdale, Florida. Payment for these ads was accomplished by returning payment with invoices sent from the Florida office (R. 240). BASS AVIATION maintained an air charter operation which, whose aircraft on various occasions stopped in Florida for fuel (R. 176). It leased an aircraft to International Jet Charter, a Florida entity located in Fort Lauderdale (R. 177-178). BASS also had dealings through a Florida resident, Mr. Shelton Mintzberg, with Marine Holdings, Limited, a Florida corporation (R. 178-179). In addition, BASS AVIATION had two aircraft leased to a Bill Tougas who was operating out of Fort Lauderdale, Florida (R. 181). BASS had a Florida resident employee, a Mr. Dennis Jaeger (R. 184).

As alleged in the Complaint and substantiated by the deposition of Mr. Bass, the aircraft which is the subject of this appeal was leased to GLENN CHARLES MOYER for the final fatal flight (R. 215-216). MOYER, a Florida resident, signed for the aircraft and received it as a representative of TITANIC AIRCRAFT SALES AND SERVICES, LTD. Moreover, the principals of TITANIC regularly conducted business in the State of Florida (R.

288-290). TITANIC was a corporation operating out of Florida (R. 289). The final flight was connected with BASS' Florida business. MOYER told Phillip Bass he was taking the Learjet N211MB To Denver, Colorado, picking up some people there, continuing to California, then going to Washington and New York, and then returning back to Florida (R. 293). The crash of this particular airplane under this particular lease gave rise to this action.

ARGUMENT

Appellant adopts the arguments raised in the Brief of Co-Appellant GATES LEARJET and adds the following to Point II of that argument:

B. The Trial Court Erred in Finding Insufficient Contacts in Bass Aviation's Business in Florida.

Because this accident occurred outside Florida, the operative portion of the jurisdictional statute is as follows:

> 48.193 *Acts subjecting persons to jurisdiction of courts of state*
>
> (1) Any person whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits that person and, if he is a natural person, his personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doings of any of the following:
>
> (a) Operates, conducts, engages in, or carries on a business or business venture in this state or has an office or agency in this state . . . §48.193(a) Fla.Stat. (1980).

The meaning of the phrase "operates, conducts, engages in, or carries on a business . . . venture" is amplified by the provisions of §48.181(3), Fla.Stat. (1980):

> (3) Any person, firm or corporation which sells, consigns, or leases by any means whatsoever tangible or intangible personal property, through brokers, jobbers, wholesalers or distributors to any person, firm or corporation in this state shall be conclusively presumed to be operating, conducting, engaging in or carrying on a business venture in this state.

In *Buckingham* v. *Atlas Aircraft Corp.*, 343 So.2d 654 (Fla. 4th DCA 1977), this Court confronted the test for finding jurisdiction over an out-of-state aircraft dealer. This Court held that purchase of aircraft located in Florida and arrangements to ferry the aircraft out of Florida were sufficient to confer jurisdiction over a Colorado aircraft dealer, even where the accident occurred outside Florida. 343 So.2d at 656.

Recently this Court was called upon to weigh the jurisdictional standard for a component part supplier located outside this state. In *Phoenix Trimming, Inc.* v. *Mowday*, 1983 F.L.W. 1178, Case No. 82-2144 (Fla. 4th DCA, Opinion filed April 27, 1983), this Court cited with approval an extensive list of standards for weighing minimum contacts, quoting *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286 (1980). The "affiliating circumstances" which this Court cites as substantiating sufficient minimum contacts are:

—carrying on business activities in the state;

—closing sales [or leases] or peforming services in the state;

—availing themselves of the privileges of the state's law;

—soliciting business either through salespersons or through advertising reasonably calculated to reach the state; or

—selling [or leasing] to customers in the state or indirectly seeking to serve the state's market. 1983 F.L.W. at 1178, citing 444 U.S. at 295.

The conduct of BASS AVIATION satisfied most, if not all, of the criteria cited above. BASS leased directly to Florida customers (R. 177-178, 181). BASS employed a Florida resident (R. 184). BASS paid for advertising in Florida through a Florida publisher (R. 241, 242). BASS was even told that the aircraft involved in this incident was destined to fly to Florida (R. 293). BASS maintained a WATS line designed to receive toll free calls from the Florida area, among others (R. 310).

Unlike *Woodson* and *Phoenix Trimming*, *supra*, there is no single random contact here with the State of Florida. There is a regular, consistent pattern of business activity in Florida conducted by BASS AVIATION. By dealing with a Florida resident (MOYER) and by having foreknowledge that the aircraft was bound for Florida, coupled with the fact that the crash actually occurred on a flight from Miami, Florida, BASS AVIATION's Florida activities were also directly related to the crash which is the subject of this suit.

To accept BASS AVIATION's position in this suit, one would have to conclude that out-of-state lessors of airplanes, automobiles, trucks or computers are immune from the jurisdiction of Florida's courts, even though they do business extensively in this state. The proposition is absurd.

BASS has attempted to claim by affidavit that it does not do business in Florida. This contention has been amply refuted by the deposition of Phillip Bass, President of BASS

AVIATION, INC. As in summary judgment hearings, a party should not be permitted to rebut its own deposition testimony by conclusory allegations in an affidavit. *See*, 30 Fla.Jur., *Summary Judgment* §21. The affidavit in this case was filed prior to the deposition, and the deposition retracts several of the sworn grounds on which BASS relied in contesting jurisdiction. A comparison of Phillip Bass' affidavit with his later deposition testimony discloses the following discrepancies, all of which should be controlled by the deposition:

Affidavit:

> Bass Aviation, Inc., does not now and has never had any officers, agents, employees, jobbers, wholesalers, or distributors in the State of Florida. (All affidavit citations refer to R. 109, 110).

Deposition:

> An employee resides in Florida (R. 184).

Affidavit:

> Bass Aviation, Inc., does not now and never has placed advertising in any publications in the State of Florida and has sent no direct mail or broadcast advertising into the State of Florida.

Deposition:

> Bass Aviation, Inc., has regularly advertised its aircraft through the *A/C Flyer*, a publication located in Florida and circulated in Florida whose accounts are payable in Florida (R. 240, 241).
>
> Bass Aviation, Inc., has a WATS line which receives incoming long distance calls toll free from Florida and other areas (R. 310).

Affidavit:

Bass Aviation, Inc., did not lease the aircraft which is the subject matter of the lawsuit, Gates Learjet, Model 25, Serial No. 059, Registration No. N211MB, to or from persons or organizations in the state of Florida, either directly or through agents, brokers, jobbers, wholesalers or distributor.

Deposition:

The individual who executed the lease agreement for the lessee was GLENN CHARLES MOYER, who was known by Phillip Bass to reside in Florida, who was known also to be a pilot based in Florida, and who disclosed to Phillip Bass that the aircraft was ultimately scheduled to be flown to Florida (R. 288-298).

Affidavit:

Bass Aviation, Inc., did not maintain, operate or navigate Gates Learjet Model 25, Serial No. 059, FAA Registration No. N211MB, in the State of Florida, although it is possible that the aircraft was occasionally operated over the airspace of the State of Florida. At the time of the alleged occurrence, Bass Aviation, Inc., had no products, material or things processed, serviced, or manufactured by it anywhere used or consumed within the State of Florida, in the ordinary course of commerce, trade, or use, whose use or consumption resulted in said injury.

Deposition:

Bass Aviation, Inc., had other similar aircraft on lease to Florida lessees at the time of this incident (R. 177-179) and knew this aircraft was intended to be flown to Florida (R. 288-298).

Affidavit:

> Glenn Charles Moyer departed Fairhope, Alabama, on or about February 29, 1980, for Denver, Colorado. He had no passengers on the aircraft when he departed; therefore, I assumed he was picking up passengers in Denver, Colorado. He told me that he was flying from Denver to Chicago and then to points in the northeast.

Deposition:

> GLENN CHARLES MOYER was known to Bass to be a Florida resident who intended ultimately to fly the aircraft to Florida after other preliminary stops (R. 288-298).

The trial court's finding of insufficient minimum contacts is a hybrid determination of fact and law, and as such the standard for appellate review is simple error. Appellant respectfully submits that there was no competent evidence in the record below by which the trial court could have found insufficient contacts; rather, the record is replete with the testimony of Appellee's president as to Appellee's extensive aircraft business activity in Florida.

CONCLUSION

Appellant respectfully submits that the trial court Order dismissing the Complaint against BASS AVIATION, INC., should be reversed and this cause remanded with instructions to permit the action to proceed on the merits against BASS. Alternatively, Appellant submits that the trial court's Order should be reversed and this cause remanded with instructions to permit further discovery on jurisdictional issues.

Respectfully submitted,

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BRIEF OF APPELLANT GATES LEAR JET CORPORATION TO THE DISTRICT COURT OF APPEAL

INTRODUCTION

Defendant/Appellant, Gates Learjet Corporation, will be referred to as it stands before this Court, as it stood before the trial court and as "Gates Learjet". Plaintiff/Appellant, Margarita Hernandez, as Personal Representative of the Estate of Rafael Hernandez, Deceased, Margarita Hernandez, Individually, Stanley Hernandez and Ahiza Hernandez, will be referred to as they stand before this Court, as they stood before the trial court and as "Hernandez". Defendant/Appellant, Linda Moyer, as Personal Representative of the Estate of Glenn Charles Moyer, Deceased, will be referred to as she stands before this Court, as she stood before the trial court and as "Moyer". Defendant/Appellee, Bass Aviation, Inc., will be referred to as it stands before this Court, as it stood before the trial court and as "Bass Aviation". Titanic Aircraft Sales Corporation is a nominal party to this appeal and will be referred to as "Titanic".

"R" refers to portions of the record on appeal.

Emphasis is added unless otherwise indicated.

STATEMENT OF THE CASE

This is an appeal from an Order dismissing plaintiff's claim against Bass Aviation, Inc. for lack of jurisdiction based on insufficient minimum contacts (R. 801).

This action arose out of the crash of a Learjet Model No. 25, FAA Registration N211MB, Serial No. 059 aircraft which occurred approximately 13 nautical miles north-northeast of Port-au-Prince, Haiti (R. 4). Both the pilot of

the aircraft, Glenn Charles Moyer, and the co-pilot, Rafael Hernandez, were killed (R. 4). Margarita Hernandez, as personal representative of the estate of Rafael Hernandez, on behalf of herself and Stanley and Ahiza Hernandez, brought suit against Linda Moyer, the personal representative of the estate of Glenn Charles Moyer, Bass Aviation, Inc., Execuflight, Inc., Gates Learjet Corporation, The General Electric Company, Titanic Aircraft Sales Corporation, Titanic Aircraft Sales and Services, Ltd., and the Insurance Company of the State of Pennsylvania (R. 1-16). Bass Aviation moved to quash and/or abate and/or dismiss the complaint for lack of jurisdiction over the person of the defendant, insufficiency of process, insufficiency of service of process, failure to state a cause of action and failure to join an indispensable party (R. 106-108). The trial court granted the motion and dismissed the claim against Bass Aviation on the ground of lack of personal jurisdiction and insufficient minimum contacts by Bass Aviation with the state of Florida (R. 801). A notice of appeal was filed by Plaintiff, Hernandez. Gates Learjet and Linda Moyer joined in the appeal.

STATEMENT OF THE FACTS

This action arises out of the crash of a Learjet Model No. 25, FAA Registration No. N211MB, Serial No. 059 aircraft which occurred approximately 13 nautical miles north-northeast of Port-au-Prince, Haiti (R. 4). The aircraft was manufactured by Gates Learjet Corporation and purchased by Execuflight, Inc. which sold the aircraft to Bass Aviation, Inc. (R. 3) Bass Aviation, in turn, leased Learjet N211MB to Titanic Aircraft Sales Corporation through its agent, Glenn Charles Moyer, a Florida resident (R. 201, 289). Titanic Aircraft Sales Corporation is a foreign corporation incorporated in the Bahamas and doing business in the state of Florida (R. 1, 3, 289, 290). Mr. Moyer represented

that he was renting the aircraft in order to fly to Denver, Colorado, to California, to Washington to New York and back to Florida (R. 293). After signing a lease agreement, Mr. Moyer and Mr. Hernandez piloted the aircraft which subsequently crashed against a mountainside in Haiti.

POINTS ON APPEAL

I.
WHETHER THE TRIAL COURT ERRED IN DISMISSING DEFENDANT, BASS AVIATION, INC., FOR LACK OF PERSONAL JURISDICTION WHERE JURISDICTIONAL DISCOVERY HAD NOT YET BEEN COMPLETED AND SUCH DISMISSAL WAS PREMATURE.

II.
WHETHER THE TRIAL COURT ERRED IN DISMISSING DEFENDANT, BASS AVIATION, INC., FOR LACK OF PERSONAL JURISDICTION WHERE SUFFICIENT CONSTITUTIONAL MINIMAL CONTACTS AND FLORIDA STATUTORY REQUIREMENTS WERE PRESENT.

ARGUMENT

POINT I.
THE TRIAL COURT ERRED IN DISMISSING DEFENDANT, BASS AVIATION, INC., FOR LACK OF PERSONAL JURISDICTION WHERE JURISDICTIONAL DISCOVERY HAD NOT YET BEEN COMPLETED AND SUCH DISMISSAL WAS PREMATURE.

Dismissal of Bass Aviation for lack of personal jurisdiction was premature as the sole discovery taken pertaining to jurisdiction was the deposition of Philip Bass. Bass has not responded to interrogatories or requests for production seeking information regarding the scope of its business in Florida. In addition, testimony from others such as Linda

Moyer, wife of the deceased pilot, Glenn Charles Moyer, may glean additional information regarding connexity.

Phillip Bass' deposition contains sworn testimony revealing the presence of constitutional minimum contacts between Bass Aviation and the state of Florida (R. 153-333, See Argument, Point II, infra). At the very least, this deposition, which contradicts the affidavit in support of plaintiff's motion to dismiss, raises questions that should be answered before the lower court dismisses this defendant for lack of personal jurisdiction.

Bass Aviation remains a defendant in other actions in which discovery is proceeding (R. 106).

POINT II.
THE TRIAL COURT ERRED IN DISMISSING DEFENDANT, BASS AVIATION, INC., FOR LACK OF PERSONAL JURISDICTION WHERE SUFFICIENT CONSTITUTIONAL MINIMAL CONTACTS AND FLORIDA STATUTORY REQUIREMENTS WERE PRESENT

The trial court's Order dismissing Bass Aviation, Inc. was predicated on lack of personal jurisdiction over the defendant due to insufficient minimum contacts. This determination was erroneous for the following reasons: (1) Plaintiff sufficiently alleged facts in her complaint to initially support long arm jurisdiction, and (2) Plaintiff presented evidence rebutting Bass' affidavit. The pertinenparagraph in the complaint is as follows:

> (13) Upon information and belief, Bass leased Learjet N211MB to persons and organizations residing and operating in the state of Florida, and leased and operated other aircraft in the state of Florida. Prior to March 3, 1980, Bass delivered Learjet N211MB into the custody of Glenn Charles Moyer with the knowl-

edge that he would fly N211MB to various places within and without the United States of America including the state of Florida.

The constitutional requirement of minimum contacts between a defendant and the forum state has its genesis in the landmark case of *International Shoe Company v. State of Washington*, 326 U.S. 310, 90 L.Ed 95, 66 S.Ct. 154 (1945) in which the Court promulgated the standard by which jurisdiction predicated on extra-territorial service is measured. The Court there held that due process only requires a corporate or other defendant to have such minimum contacts with the forum state such that the maintenance of the suit would not offend traditional notions of fair play and substantial justice. It must be reasonable to require the defendant to defend the particular action in the forum state. *See World-Wide Volkswagen Corp. v. Woodson*, 440 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980).

Florida has elected not to extend its long-arm jurisdiction to the limits of jurisdiction available to it under the federal constitution and has enacted statutes which require more activities or contacts with Florida than are required by constitutional due process standards. *See Shoei Safety Helmet Corp. v. Conlee*, 409 So.2d 39 (Fla. 4th DCA 1982); *Youngblood v. Citrus Association of the New York Cotton Exchange*, 276 So.2d 505 (Fla. 4th DCA), *Cert. denied*, 285 So.2d 26 (Fla. 1973). The long-arm statute and statute providing for service on a nonresident engaged in business in the state are drawn so that compliance with the Florida requirements will more than satisfy the due process requirements of due process.[1] *Dublin Company v. Peninsular*

[1]The Third District has recently observed that federal decisions reaffirming the need for minimum contacts and recent Florida decisions greatly expanding those acts for which long-arm jurisdiction will lie have brought Florida and federal practice closer in line. *April Industries, Inc. v. Levy*, 411 So.2d 303 (Fla. 3d DCA 1982).

Supply Co., 309 So.2d 207 (Fla. 4th DCA 1975).

Section 48.181, Florida Statutes (1981) provides the method of service of process on nonresidents engaging in business in Florida as follows:

> 48.181 Service on nonresident engaging in business in state.—
>
> (1) The acceptance by any person or persons, individually, or associated together as a copartnership or any other form or type of association, who are residents of any other state or country, and all foreign corporations, and any person who subsequently becomes a nonresident of the state or conceals his whereabouts, of the privilege extended by law to nonresidents and others to operate, conduct, engage in, or carry on a business or business venture in the state, or to have an office or agency in the state, constitutes an appointment by the persons and foreign corporations of the secretary of State of the state as their agent on whom all process in any action or proceeding against them, or any of them, arising out of any transaction or operation connected with or incidental to the business or business venture may be served. The acceptance of the privilege is signification of the agreement of the persons and foreign corporations that the process against them which is so served is of the same validity as if served personally on the persons or foreign corporations.
>
> (2) If a foreign corporation has a resident agent or officer in the state, process shall be served on the resident agent or officer.
>
> (3) Any person, firm or corporation which sells, consigns, or leases by any means whatsoever tangible or intangible personal property, through brokers, job-

bers, wholesalers, or distributors to any person, firm or corporation in this state shall be conclusively presumed to be operating, conducting, engaging in or carrying on a business venture in this state.

Section 48.193, Florida Statutes (1981) delineates the acts subjecting persons or corporations to jurisdiction of the Court of this state and provides:

48.193 Acts subjecting persons to jurisdiction of courts of state.—

(1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits that person and, if he is a natural person, his personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following:

(a) Operates, conducts, engages in, or carries on a business or business venture in this state or has an office or agency in this state.

(b) Commits a tortious act within this state.

(c) Owns, uses or possesses any real property within this state.

(d) Contracts to insure any person, property, or risk located within this state at the time of contracting.

(e) With respect to proceedings for alimony, child support, or division of property in connection with an action to dissolve a marriage or with respect to an independent action for support of dependents, maintains a matrimonial domicile in this state at the time of the commencement of this action or, if the defendant resided in this state preceding the commencement of

the action, whether cohabiting during that time or not. This paragraph does not change the residency requirement for filing an action for dissolution of marriage.

(f) Causes injury to persons or property within this state arising out of an act or omission outside of this state by the defendant, provided that at the time of the injury either:

1. The defendant was engaged in solicitation or service activities within this state which resulted in such injury; or

2. Products, materials, or things processed, serviced, manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade, or use, and the use or consumption resulted in the injury.

(g) Breaches a contract in this state by failing to perform acts required by the contract to be performed in this state jury; or this section may be made by personally serving the process upon the defendant outside this state, as provided in section 48.194. The service shall have the same effect as if it had been personally served within this state.

(3) Only causes of action arising from acts or omissions enumerated in this section may be asserted against a defendant in an action in which jurisdiction over him is based upon this section, unless the defendant in his pleadings demands affirmative relief on the other causes of action, in which event the plaintiff may assert any cause of action against the defendant, regardless of its basis, by amended pleadings pursuant to the rules of civil procedure.

(4) Nothing contained in this section shall limit or affect the right to serve any process in any other manner or hereinafter provided by law.

Both of these statutes have been construed as requiring the principle of "connexity". Section 48.181(1) provides for service on the Secretary of State in *any action or proceeding arising out of any transaction or operation connected with or incidental to the business or business venture.* Decisions concerning what constitutes doing business under section 48.181 also apply to section 48.193(1)(a). *Orange Motors of Coral Gables, Inc. v. Rueben H. Donnelley Corp.*, 415 So.2d 892 (Fla. 3d DCA 1982). Thus, the cause of action must arise out of the alleged activities of Bass Aviation within the state of Florida. Jurisdiction depends on the quality of Bass Aviation's "doing business" in Florida and the relationship between that business and the accident giving rise to this cause of action.

The quality and nature of Bass Aviation's contacts with the state of Florida certainly support the assertion of Florida's jurisdiction over it. Hernandez has stated sufficient facts in the complaint to support a reasonable inference that the defendant can be subjected to jurisdiction within the state. Bass Aviation's sole challenge to plaintiff's jurisdictional facts is a selfserving affidavit authored by Phillip Bass, president of Bass Aviation. This affidavit is contradicted by Mr. Bass' own sworn testimony taken by deposition which plaintiff filed with the court to carry her burden of substantiating (by opposing affidavit, testimony or documents) material facts supporting her allegations which justify service of process under the long-arm statute. *See McLean v. Church of Scientology of California*, 538 F.Supp 545 (M.D. Fla. 1982); *Dico Co. v. Meekins, Inc.*, 407 So.2d 1067 (Fla. 4th DCA 1981).

Philip Bass' deposition clearly establishes the requisite constitutional minimum contacts and satisfies Florida's "connexity" requirements. Mr. Bass testified as to numerous activities engaged in by Bass Aviation in Florida. Bass Aviation advertised in Florida in a national aviation magazine called "The A/C Flyer" (R. 240, 412). The company placed these advertisements by phone calls to the A/C Flyer office in Fort Lauderdale, Florida. Payment for these ads was accomplished by returning payment with invoices sent from the Florida office (R. 240). Bass Aviation maintained an air charter operation which, on various occasions, stopped in Florida for fuel (R. 176). It leased an aircraft to International Jet Charter, a Florida entity located in Fort Lauderdale (R. 177-178). Bass also had dealings through a Florida resident, Mr. Shelton Mintzberg, with Marine Holdings Limited, a Florida corporation (R. 178-179). In addition, Bass Aviation had two aircraft leased to a Bill Tougas which were operating out of Fort Lauderdale, Florida (R. 181). Bass had a Florida resident employee, a Mr. Dennis Jaeger (R. 184).

As alleged in the complaint and substantiated by the deposition of Mr. Bass, the aircraft which is the subject of this appeal was leased to Glenn Charles Moyer for the final fatal flight (R. 215-216). Moyer, a Florida resident, signed for the aircraft and received it as a representative of Titanic Aircraft Sales and Service, Limited. Moreover, the principals of Titanic regularly conducted business in the state of Florida (R. 288-290). Titanic was a corporation operating out of Florida (R. 289). The final flight was connected with Bass' Florida business as Moyer told Phillip Bass he was taking the Learjet N211MB to Denver, Colorado, picking up some people there, continuing to California, then going to Washington and New York, and then returning back to

Florida (R. 293). The crash of this particular airplane gave rise to this action.

Doing business in Florida as a predicate for jurisdiction does not require a direct presence or direct activity within the border of Florida. *Ford Motor Company v. Atwood Vacuum Machine Co.*, 392 So.2d 1305 (Fla. 1981). The inquiry rather is into the nature of the defendant's activities in the state. Continuous and systematic activities indirectly through others may provide a reasonable basis. *Id.* If the sale of a product is not simply an isolated occurrence but arises from the efforts of a manufacturer or distributor to serve the market in the state, it is reasonable to subject that corporation to suit in one of those states. *World-Wide Volkswagen Corp. v. Woodson, supra.* In *Atwood,* Ford Motor Company, defendant in a products liability action, brought a third party complaint against Atwood an Illinois corporation, alleging that Atwood manufactured the Ford door hinge assembly which allegedly caused the injury. The Florida Supreme Court examined Florida jurisdiction over Atwood within a "reasonableness" framework, and stated:

> The inquiry into whether there are 'minimum contacts' between the forum state and a nonresident business enterprise must look at the nature of the defendant's activities in the state. Continuous and systematic activities provide a reasonable basis for the assertion of jurisdiction.

392 So.2d at 1310.

Even one contact with a forum state may serve as the basis for asserting in personum jurisdiction. *Lacy v. Force V Corp.*, 403 So.2d 1050 (Fla. 1st DCA 1981). The *Lacy* court examined United States Supreme Court decisions including *International Shoe* and *World-Wide Volkswagen Corp. v. Woodson, supra* and concluded that the Court had never

held that one contact would preclude assertion of personal jurisdiction over the out-of-state defendant. The *Lacy* court also concluded that the Florida Supreme Court's *Atwood* decision implicitly recognizes that a single isolated transaction does not offend due process.

The Fourth District recently addressed the connexity requirements of the long-arm statute in *Shoei Safety Helmet Corp. v. Conlee, supra.* The precise issue was whether there must be connexity to the specific object involved in the cause of action or whether the connexity can be to the general activity of the manufacturer in the state. The court concluded that the manufacturer was engaged in the business of promoting and soliciting sales in Florida and was therefore, amenable to Florida's jurisdiction notwithstanding the fact that the specific helmet involved was manufactured and originally sold in Ohio rather than Florida.

In *Sanchez v. Laribee Machine Co.*, 409 So.2d 1064 (Fla. 3d DCA 1981), *pet. for review denied*, 417 So.2d 329 (Fla. 1982), the court held that a corporate defendant having no presence or contacts within Florida, neither owning nor leasing property in Florida, conducting no business in Florida through brokers or others, having no office nor phone listing, making no deliveries nor solicitation of business, and having not previously availed itself of the privilege of carrying on business activities in Florida, was nevertheless, subject to service of process under the Florida long-arm statutes. The court found that the manual accompanying the machine purchased from the company contained a full page advertisement of that machine and invited the purchaser to write or phone for more information on the company's complete line. This evidence, the court declared; "when viewed in the light of *Ford Motor Company v. Atwood Vacuum Machine Co.*, 392 So.2d 1305 (Fla.), clearly shows that its

actions and conduct made it amenable to service of process under the Florida long-arm statutes". *Id*, at 1066.

The *Sanchez* contacts are analogous to the case at bar. In fact, Bass Aviation's contacts with Florida are more extensive than those of Laribee Machine Company. Not only did Bass Aviation advertise in Florida, it leased numerous aircraft to Florida entities. Its advertising was designed to achieve sales or leases of Learjets in Florida and in the endeavor, was obviously successful. Bass Aviation did, indeed, conduct business in the state of Florida. It is entirely reasonable to expect a corporation advertising in Florida and leasing planes to Florida residents to be used in Florida, to defend an action brought by a Florida resident, in Florida.

CONCLUSION

Based on the foregoing legal argument and authorities, Gates Learjet Corporation respectfully submits that the trial court's dismissal of Bass Aviation, Inc. for lack of personal jurisdiction based in insufficient minimum contacts should be reversed.

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BY: _____
CAROLYN PICKARD

IN THE
DISTRICT COURT OF APPEAL,
FOURTH DISTRICT OF FLORIDA

Case No. 83-366

MARGARITA HERNANDEZ, as Personal Representative of the Estate of RAFAEL HERNANDEZ, JR., deceased; MARGARITA HERNANDEZ, individually; STANLEY HERNANDEZ; AHIZA HERNANDEZ; GATES LEARJET CORP., a foreign corporation; and LINDA MOYER, as Personal Representative of the Estate of GLENN CHARLES MOYER, deceased,

Appellants,

v.

BASS AVIATION, INC., a foreign corporation; TITANIC AIRCRAFT SALES AND SERVICE, LTD., a foreign corporation; and THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, a foreign corporation,

Appellees/Petitioners.

NOTICE OF INVOKING DISCRETIONARY JURISDICTION

NOTICE is hereby given that BASS AVIATION, INC., and THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, Petitioners, invoke the certiorari jurisdiction of the Supreme Court to review the decision of this Court filed July 11, 1984, motion to rehear denied in an order of this Court filed August 21, 1984.

The Petitioners invoke the jurisdiction of the Supreme Court as the said decision and order of this Court present conflict with: *Lacy v. Force V Corporation*, 403 So.2d 1050 (Fla. 1st DCA 1981); *General Tire & Rubber Co. v. Hickory Springs Manufacturing Co.*, 388 So.2d 264 (Fla. 5th DCA

1980); *American Baseball Cap, Inc. v. Duzinski*, 359 So.2d 483 (Fla. 1st DCA 1978); *Joyce Brothers Storage and Van Company v. Piechalak*, 343 So.2d 97 (Fla. 3d DCA 1977); *Worldwide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.ED. 2d 490 (1980); Helicopteros Nacionales de Colombia v. Hall, 104 S.Ct. 1868 (1984); *International Shoe Company v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.ED. 95 (1945); *Shoei Safety Helmet Corp. v. Conlee*, 409 So.2d 39 (Fla. 4th DCA 1981), *reh.* 1982; *Derrick Waverly Moo Young v. Air Canada and Venezolana International de Aviacion*, 9 Fla. L.W. 519 (Fla. 4th DCA 1984); *Phoenix Trimming, Inc. v. Lois C. Mowday*, 8 Fla. L.W. 1178 (Fla. 4th DCA 1983).

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 19th day of September, 1984, to all counsel on the attached service list.

PETERS, PICKLE, FLYNN,
NIEMOELLER & DOWNS
Attorneys for Petitioners
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(305) 374-3103

BY: _____
DONNA S. CATOE

BASS AVIATION, INC.
FAIRHOPE MUNICIPAL AIRPORT
P.O. Box 925
Fairhope, Alabama
(205) 928-1230

February 29, 1980

Lease Agreement entered into this date between Bass Aviation, Fairhope, Alabama, and *Titanic Aircraft Sales & Service, LTD* a one week 7 day lease on Lear Jet N211MB Serial 059. It is agreed that the advance sum of $10,000 will be paid up front based on a guaranteed 20 hour usage at $500.00 per hour. Any hours in excess of 20 hours will be at the standard rate of $500.00 per hour. Bass Aviation will provide insurance and *Titanic Aircraft Sales & Service LTD* will provide fuel; crew and maintenance for the duration of the lease. Should the aircraft be damaged to the point it has to be taken out of service for repair, then *Titanic Aircraft Sales and Service, LTD* agrees to make monthly payments to the bank until the aircraft is returned from repair and into service. This sum should not exceed $26,000 per month. This lease should be governed under the laws of the State of Alabama.

Charles Moyer

Phillip W. Bass
President

Attested to by _____
upon delivery of aircraft

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction on the equal protection of the laws.

Florida's long-arm statute Section 48.193, Florida Statutes (1983) provides:

> 48.193 Acts subjecting persons to jurisdiction of courts of state.—
>
> (1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits that person and, if he is a natural person, his personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following:
>
> (a) Operates, conducts, engages in, or carries on a business venture in this state or has an office or agency in this state.
>
> (b) Commits a tortious act within this state.
>
> (c) Owns, uses, or possesses any real property within this state.

(d) Contracts to insure any person, property, or risk located within this state at the time of contracting.

(e) With respect to proceedings for alimony, child support, or division of property in connection with an action to dissolve a marriage or with respect to an independent action for support of dependents, maintains a matrimonial domicile in this state at the time of the commencement of this action or, if the defendant resided in this state preceding the commencement of the action, whether cohabiting during that time or not. This paragraph does not change the residency requirement for filing an action for dissolution of marriage.

(f) Causes injury to persons or property within this state arising out of an act or omission outside of this state by the defendant, provided that at the time of the injury either:

1. The defendant was engaged in solicitation or service activities within this state which resulted in such injury; or

2. Products, materials, or things processed, serviced, or manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade, or use, and the use or consumption resulted in the injury.

(g) Breaches a contract in this state by failing to perform acts required by the contract to be performed in this state.

(2) Service of process upon any person who is subject to the jurisdiction of the courts of this state as provided in this section may be made by personally

serving the process upon the defendant outside this state, as provided in s. 48.194. The service shall have the same effect as if it had been personally served within this state.

(3) Only causes of action arising from acts or omissions enumerated in this section may be asserted against a defendant in an action in which jurisdiction over him is based upon this section, unless the defendant in his pleadings demands affirmative relief on other causes of action, in which event the plaintiff may assert any cause of action against the defendant, regardless of its basis, by amended pleadings pursuant to the rules of civil procedure.

(4) Nothing contained in this section shall limit or affect the right to serve any process in any other manner now or hereinafter provided by law.